

## **REMARKS / DISCUSSION OF ISSUES**

Claims 1-4 and 6-17 are presented for further consideration.

### **Objection to the Specification**

The objections to the specification have been addressed and are believed moot in view of the present amendments thereto.

### **Claims 18 and 19**

While Applicants do not concede the rejections to claims 18 and 19 set forth in the Office Action, in the interest of expediting prosecution, the claims have been cancelled.

### **Rejections under 35 U.S.C. § 112, Second Paragraph**

Claims 13-15, 17 and 19 were rejected under this section of the Code. While Applicants do not concede the rejections to these claims, amendments provided are believed to render these rejections moot.

### **Rejections under 35 U.S.C. § 102**

Claims 1-4 and 4-19 were rejected under 35 U.S.C. § 102(e) as being unpatentable over *Ikehira et al.* For at least the reasons set forth below, Applicants respectfully submit that all pending claims are patentable over the applied art.

Claim 1 features, inter alia:

*each of the odd-integer sub-units of the conjugated chain has a size which is sufficiently small to enable the donor polymer to have a lowest-energy triplet level of an energy of about 20,000 cm<sup>-1</sup> or higher.*

Claims 10, 11, 13 and 16 each include this feature.

In rejecting claims including this feature, the Examiner makes the assertion that

this is inherently met by Example 3 of the applied art. However, it is unclear what the basis for this assertion is; and Example 3 does not mention or otherwise describe the triplet state or energy states. The rejection for inherency is improper. To wit:

M.P.E.P. § 2112 IV provides that:

*EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING  
TO SHOW INHERENCY*

*The fact that a certain result or characteristic **may** occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “**To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference,’** and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).*

(emphasis added).

Furthermore, a claim rejection must be based on objective evidence of record, and cannot be supported merely on subjective belief and unknown authority. See, e.g., M.P.E.P. § 2144.03; In re Lee, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); In re Zerko, 258 F.3d at 1386, 59 USPQ2d at 1697.

No such concrete evidence has been provided by the Examiner here, nor did the

Examiner submit an affidavit as required by 37 C.F.R. § 1.104(d)(2) if this proposed motive were based on facts within his personal knowledge (see M.P.E.P. § 2144.03). Applicants respectfully request that such an affidavit be provided if a rejection continues to be made without a citation of any objective evidence.

Notably, if the Examiner does provide the requisite extrinsic evidence in support of a future rejection, such a rejection cannot be made final.

Claim 9 recites:

*An electroluminescent device comprising a combination of a charge-transporting conjugated donor polymer and a phosphorescent acceptor compound dispersed in the donor polymer, the charge-transporting conjugated donor polymer including a conjugated chain including one or more phenylene-based sub-units, each phenylene-based sub-unit having a first and a second radical site connecting the phenylene-based sub-unit to a respective first and second adjacent conjugated sub-unit of the conjugated chain, the first and the second unsaturated radical site being positioned relative to one another in a meta arrangement.*

The Office Action directs Applicants to Example 3 of the applied art, without clear explanation as to why these claimed features are alleged to be so disclosed. This notwithstanding, Example 3 does not provide any disclosure or suggestion of, for example, *including a conjugated chain including one or more phenylene-based sub-units and a conjugated chain including one or more phenylene-based sub-units* as specifically recited in claim 9.

Therefore, the applied art fails to disclose at least one feature of claim 9, and thus a *prima facie* case of anticipation cannot be established based thereon.

### Rejections under 35 U.S.C. § 103

1. Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ikehira et al.*
2. Claims 1-11, 13, 14 and 16-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Roberts, et al.*

Claim 3 depends from claim 1 and thus is patentable at least because of its dependence thereon.

Claims 1, 10, 11, 13 and 16, each feature:

*each of the odd-integer sub-units of the conjugated chain has a size which is sufficiently small to enable the donor polymer to have a lowest-energy triplet level of an energy of about  $20,000\text{ cm}^{-1}$  or higher.*

Again, the Examiner asserts that this feature is inherent to *Roberts, et al.* in view of the polymers of Examples 21 and 25. No extrinsic evidence has been provided by the Examiner here, nor did the Examiner submit an affidavit as required by 37 C.F.R. § 1.104(d)(2) if this proposed motive were based on facts within his personal knowledge (see M.P.E.P. § 2144.03). Applicants respectfully request that such an affidavit be provided if a rejection continues to be made without a citation of any objective evidence.

Notably, if the Examiner does provide the requisite extrinsic evidence in support of a future rejection, such a rejection cannot be made final.

### General Comments on Rejections of Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicant believes that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicant does not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicant concurs that the basis for the rejection of any dependent claim is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

### **Conclusion**

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:  
Phillips Electronics North America Corp.

/William S. Francos/

by: William S. Francos (Reg. No. 38,456)

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